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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/990,865	11/15/2001	Daniel R. McClellan	15215.2	2263

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EXAMINER

GOETZ, JOHN S

ART UNIT	PAPER NUMBER
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3725

DATE MAILED: 12/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/990,865

Applicant(s)

MCCLELLAN ET AL.

Examiner

John S. Goetz

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Group I, claims 1-29 in Paper No. 8 is acknowledged. Claims 30-38 are canceled without prejudice.

### ***Claim Objections***

Claim 26 is objected to because they both recite the term "comprising" twice in the preamble. This appears to be a typographical error. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3, 4, 6 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 3 and 4 recite the limitation "extending between the pulling tower and the carriage assembly and mounting the pulling tower to the carriage assembly." This limitation is confusing and indefinite because it could refer either to the "positioning mechanism" or the "arm."

Claims 6 and 14 recite the limitation "a carriage body defining a lock pin opening." This claim is indefinite because it is not clear how the carriage body "defines" a pin opening.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 8-13 and 18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ballard et al. (5,111,680).

Regarding claims 1 and 2, Ballard discloses an apparatus for repairing deformed vehicle structures comprising:

1. a vehicle platform (14);
2. an anchor (see Fig. 1);
3. a carriage track (see flanges 16A and 16B);
4. a carriage assembly (22) movable on the track (see Fig. 3);
5. a pivotally mounted (see pivot beam 24 and pivot pin 105 in Fig. 2) pulling tower (26) mounted on the carriage assembly (see Fig. 1).

Claims 3-5, as best understood, add a "tower positioning mechanism" and its various components. Ballard discloses a "positioning means" (see beam 24 and position pin 114 and lever arm 116), which utilizes a series of notches (106) on a notch plate (39) and a pawl or pin (114) that is biased by a spring (113) to secure the tower in position (see Figs. 2 and 3).

Claims 8 and 9 add that the track extend around the entire bench, including the curved corners. Ballard discloses that the device can exert a force "on any portion of the vehicle" and that "force supplying members are provided around the periphery" of the bench (see column 1, lines 15-24). In addition, Fig. 3 clearly shows that the track members 16A and 16B are arcuate. Thus, these limitations are deemed inherent and implicit in Ballard's disclosure.

Claims 10, 11 and 12 add inner and outer wheels and their respective configurations to the carriage assembly. Ballard discloses an inner wheel (38), adjacent to the inner rail (16A), and a pair of outer wheels (68), which ride on a "slot" (see Fig. 5). Additionally, Ballard discloses a pair of guide rollers (59) positioned adjacent the outer wheels and biased by a spring assembly (62) (see Fig. 5).

Regarding claims 13 and 18, Ballard discloses that the tower is supported "solely" by the carriage assembly (see Fig. 1) and that the carriage body is "generally trapezoidal" with the narrow end facing inward (see dotted lines in Fig. 3).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 7 and 14-17 rejected under 35 U.S.C. 103(a) as being unpatentable over Ballard.

These claims add a "locking mechanism" and its various components. Ballard expressly discloses a similar locking mechanism comprising:

1. a pin (72) which is coaxial (see hole 76) with the pivot axis of the pulling tower;
2. a pin opening,
3. where the pin is movably received in the opening (see column 3, lines 39-42);
4. where the pin locks the carriage assembly in place by engaging apertures (73) in the track (16B).

Ballard lacks a "pin biasing member." However, given that Ballard's pin is clearly "biased" by gravity to remain locked in the aperture and since the applicant has not disclosed that the use of a particular biasing member is for any particular purpose or is critical to solving any stated problem, this limitation is deemed an obvious matter of design choice.

Claims 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (4,530,232) in view of Barton (4,520,649).

Regarding claim 22, Smith discloses a pulling assembly comprising:

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1. a mounting assembly (60);
2. an elongated tower arm (63);
3. a pulling tower attached to the distal end of the tower arm (see Fig. 3).

Smith lacks a "force arm" with a fixed end and free end, where the free end can be attached at a plurality of selected positions. Barton, however, in the art of securing vehicles to frame-straightening benches, discloses the use of "inclined braces" (see column 3, lines 45-46 and Fig. 1). Additionally, Barton discloses that the use of such inclined members will "greatly resist heavy lateral loading" placed on the vertical member (column 1, lines 63-65). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to add inclined braces to Smith's pulling assembly in order to make the assembly stronger, as suggested by Barton.

Regarding claim 23, Smith discloses that the entire assembly that carries the vehicle (i.e. the carriage assembly) pivots (see column 2, lines 14-26).

Regarding claim 24, Smith discloses that the tower is "telescopic" (see column 6, lines 40-43).

Claim 25 adds that the force arm is telescoping. However, absent a showing of criticality in solving a stated problem and given that Smith discloses the well-known use of "telescopic" members, this limitation is rendered an obvious matter of design choice.

Claims 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ballard in view of Barton (4,520,649).

Regarding claim 26, Ballard teaches all but the "force arm." However, Barton's teaches the use of a "force arm" as described above. Thus it would have been obvious to one ordinary skill in the art at the time of the invention modify Ballard's device by providing the pulling towers with "force arms" in order to make the assembly stronger, as suggested by Barton.

Regarding claims 27-29, Baron teaches that the arm is adjustable, can pivot and has locking members (see Fig. 1). Thus, these claims are rendered obvious and thus rejected for the same reason as claim 26, above.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John S. Goetz whose telephone number is 703-308-1411. The examiner can normally be reached on Mon, Tues, Thurs, Fri 7:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allen Ostrager can be reached on 703-308-3136. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-305-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-3136.

JSG  
December 6, 2002



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